

SENATE BILL No. 447

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-23-3.

Synopsis: Vehicle dealers and franchises. Make it an unfair practice (for which the secretary of state may revoke a state issued license and an injured dealer may sue for compensatory damages or injunctive relief) for a vehicle manufacturer or distributor to perform certain acts with respect to a dealer without good cause, with the burden of proof on the existence of good cause being on the manufacturer or distributor. Makes it an unfair practice for a manufacturer or distributor, directly or indirectly, to impose unreasonable restrictions on a dealer or franchisee relative to certain business transactions among the parties. Makes it an unfair practice for a manufacturer, wholesaler, distributor, or franchisor to fail without good cause to renew a franchise on terms equally available to all dealers of the manufacturer, wholesaler, distributor, or franchisor, or to terminate a franchise or restrict the transfer of a franchise before the franchisee receives a fair and reasonable compensation for the value of the business and business premises.

Effective: July 1, 2009.

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January 14, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 447

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 9-23-3-26 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 26. (a) It is an unfair practice for a manufacturer or**
4 **distributor to:**

5 (1) **cancel, terminate, or fail to renew the franchise agreement**
6 **of a dealer without good cause;**

7 (2) **fail or refuse to extend the franchise agreement of a dealer**
8 **upon the expiration of the franchise agreement without good**
9 **cause; or**

10 (3) **offer a renewal, replacement, or succeeding franchise**
11 **agreement containing terms and provisions that have the**
12 **effect of substantially changing or modifying the:**

13 (A) **sales and service obligations;**

14 (B) **capital requirements; or**

15 (C) **facilities;**

16 **of the dealer arbitrarily and without good cause,**
17 **notwithstanding any term or provision of a franchise**

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1 agreement.

2 (b) For purposes of subsection (a), a manufacturer or
3 distributor has the burden of proof to establish that good cause
4 exists to:

5 (1) cancel, terminate, or fail to extend or renew the franchise
6 agreement of a motor vehicle dealer; and

7 (2) require substantial change or modification of the sales and
8 service obligations or capital requirements of a motor vehicle
9 dealer as a condition to extending or renewing the existing
10 franchise agreement.

11 (c) If a manufacturer or distributor contends that the
12 performance of the dealer is the reason for the cancellation,
13 termination, or failure to extend or renew for purposes of
14 subsection (b), the manufacturer or distributor has the burden of
15 proving that the standards of performance on which the
16 manufacturer's or distributor's contention is based are statistically
17 valid and reliable and reflect current market conditions,
18 appropriate inventory allocation, and manufacturer and
19 distributor sales and service assistance to the dealer.

20 (d) If the action of a manufacturer or distributor allegedly
21 constituting an unfair practice under subsection (a) is challenged
22 by the dealer by means of mediation, arbitration, or litigation, the
23 action of the manufacturer or distributor is stayed pending the
24 final resolution of the challenge.

25 SECTION 2. IC 9-23-3-27 IS ADDED TO THE INDIANA CODE
26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
27 1, 2009]: Sec. 27. It is an unfair practice for a manufacturer or
28 distributor, directly or indirectly, to impose unreasonable
29 restrictions on a dealer or franchisee relative to:

30 (1) transfer;

31 (2) sale;

32 (3) right to renew;

33 (4) termination;

34 (5) discipline;

35 (6) noncompetition covenants;

36 (7) site control, whether by sublease, collateral pledge of lease,
37 or otherwise;

38 (8) right of first refusal to purchase;

39 (9) option to purchase;

40 (10) compliance with subjective standards; or

41 (11) waiver of legal or equitable rights.

42 SECTION 3. IC 9-23-3-28 IS ADDED TO THE INDIANA CODE

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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2009]: **Sec. 28. It is an unfair practice for a manufacturer,**
3 **wholesaler, distributor, or franchisor, directly or indirectly, to:**
4 **(1) fail without good cause to renew a franchise on terms**
5 **equally available to all dealers of the manufacturer,**
6 **wholesaler, distributor, or franchisor; or**
7 **(2) terminate a franchise or restrict the transfer of a franchise**
8 **before the franchisee receives a fair and reasonable**
9 **compensation for the value of the business and business**
10 **premises.**

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